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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

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New York Franchise Tax Law Changes 163

Recent Decisions

Connecticut—Excess-profits tax deduction 169

Delaware—Professional proxy solicitation 164

—Recapitalization—accrued dividends 165

—Records—inspection by director 165

Illinois—Oil production tax ruled invalid 169

Iowa—Attorney's fee—stockholder's suit 165

Maryland—Receiver—stockholder's suit—status 166

Massachusetts—Foreign company—internal affairs . . . 166

Mississippi—Income tax—excess profits deduction . . . 172

Missouri—Sales tax—interstate commerce 172

New Jersey—Actions between foreign corporations . . 167

—Intangibles taxes—foreign corporation 173

New York—Derivative suit—service on corporation . . 168

—Maintaining offices—service of process 168

Oklahoma—Income taxable—interstate commerce . . . 173

Pennsylvania—Tax on leased Government machinery . 174

Appealed to The Supreme Court 175

Regulations and Rulings 176

Some Important Matters for May and June 177

Saving Time for the Lawyer

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New York Franchise Tax Law Changes

The following brief summary calls attention to some of the outstanding changes in the law of New York which imposes franchise taxes upon business corporations, holding companies and investment trusts, effected by Ch. 415, Laws of 1944.

Holding companies, formerly taxed under special provisions which were contained in Article 9 of the Tax Law, are now taxable under the general provisions of Article 9-A.

Investment trusts, which were formerly subject to special treatment for franchise tax purposes, are also brought within the general provisions of Article 9-A. Instead of the old rate of $4\frac{1}{2}\%$ on all investment income, the effective rate applicable to dividends will be 3% and the rate applicable to interest will be 6%.

There has been retained the method of basing the tax normally upon a proportion of net income allocated to the state and providing for the application of one of three alternative minimum bases (one of which continues to be the \$25 minimum tax) in the event that one of these will produce a higher tax than that based upon such allocated net income. Substantial changes are, however, made in that alternative known as the "one-mill tax." The one-mill tax minimum provision, formerly applied to each dollar of the value of the issued capital stock allocated to the state, is now applicable to each dollar of business and of investment capital allocated to the state.

Dividends received from a subsidiary will be excluded from income, and the capital invested in subsidiaries, or the portion thereof allocated to New York, will be omitted from the one-mill tax and will be taxed at a special, low graduated rate: $\frac{1}{2}$ mill on the first \$50,000,000, $\frac{1}{4}$ mill on the next \$50,000,000, and $\frac{1}{8}$ mill on all over \$100,000,000. However, consolidated returns will still be permitted and, in some cases, required.

Business income and capital will be allocated within and without the State by use of the so-called Massachusetts formula of property-receipts-payrolls, with certain modifications and with wide equitable adjustment discretion conferred on the State Tax Commission.

Capital invested in corporate stocks and securities, and the income therefrom, will be allocated according to the allocations applicable to the issuing companies.

The objective is to treat every corporation as a business corporation to the extent it is such, as an investment trust to the extent it is such, and as a holding company to the extent it is such.

Adjustments with respect to the period covered by the tax payment are effected so as to place the franchise tax on business and holding companies and investment trusts, after a transition period, on a current basis, with the result that eventually the report filed by calendar year corporations on or before May 15th will, as usual, show income for the preceding calendar

year, but the tax payment will also cover that preceding calendar year. Then, in the event that the corporation ceases to do business (dissolves or withdraws) during the year in which the report is filed, a return and tax, covering the additional fractional period up to the time of ceasing to do business, is required. Comparable provision is made for companies

having fiscal years, the base-privilege year coinciding in every case with the taxpayer's fiscal year. Companies having fiscal years ending between the last day of February and July 1, will, as heretofore, file within four months after the close of the fiscal year. All other fiscal year companies will continue, as heretofore to file on May 15th.

Domestic Corporations

Delaware.

Application for preliminary injunction to restrain corporation in employing professional proxy solicitors denied. In a recent decision in the United States District Court, District of Delaware, the court observed that a search disclosed no Delaware authority on the question whether the employment of professional proxy solicitors is a proper method to inform stockholders of considerations in support of the policy advocated by a corporation's management. In this case, there was an application by a stockholder for a preliminary injunction to restrain the defendant corporation from continuing the services of professional proxy solicitors and to enjoin the company from receiving votes at its annual meeting for the election of directors cast pursuant to authorization in proxies so obtained, but to permit the proxies designated to vote for or against the adoption of a plan of liquidation being proposed by a stockholders' committee. The court denied the motion for the preliminary injunction, deeming that the plaintiff had failed to make a showing by his affidavits sufficient to warrant its issuance. The court indicated a legal decision as to whether the directors were justified in spending corporate funds to engage professional proxy solicitors and paying them in part for their services was one which could only be determined after a final hearing, in view of the fact that the defendants made an issue of the question. "After all the facts are in," said the court, "it will be necessary to decide (1) whether there was a substantial question of policy involved and (2) even if there was, may it be said that management can spend corporate funds to employ professional proxy solicitors as a medium of information to get their views across to the stockholders." It was also indicated that if this legal question was determined adversely to the management, the question of the amount of money to be returned to the corporation's treasury would then be before the court. *Hand v. Missouri-Kansas Pipe Line Company et al.*, United States District Court, District of Delaware, March 18, 1944. Edwin D. Steel of Morris, Steel & Nichols

of Wilmington, for plaintiff. Aaron Finger of Richards, Layton & Finger, of Wilmington, for individual defendants. Stewart Lynch of Wilmington, for corporate defendant. Commerce Clearing House Court Decisions Requisition No. 319039.

Federal court considers allegation of unfairness of recapitalization plan involving alteration of rights of preferred stock. In a recent decision, preferred stockholders of a Delaware company instituted suit in the Federal District Court of that state to determine the validity of a reclassification plan involving an alteration of the rights of the preferred stock. The plan, among other things, proposed the creation of prior preferred stock and an offer of such new shares to holders of present preferred in exchange for old shares by cancellation of existing claims to accrued dividends, but preserving the right to such dividends in the form of liquidating preference in the new stock. In passing upon the question as to whether the plan was unfair to the preferred stockholders, the court, while expressing its view, after an examination of the plan and its effects, "that the preferred gets nothing for what it is required to relinquish; and the common is not required to give up anything," said: "But my views are ineffectual in the light of my conclusion that the Delaware law controls. As there can be no possible finding of fact from the evidence adduced here to which the Delaware symbols of 'constructive fraud' or 'bad faith' or 'gross unfairness' may attach, the legal formula established by Delaware compels the result that plaintiffs' charge of unfairness can not be sustained." *Barrett et al. v. Denver Tramway Corporation*, 53 F. Supp. 198.

State Supreme Court rules director need not give fellow directors reasons for desiring to inspect corporate books and need not be personally present when his assistants act for him in such inspection. A director of defendant corporation sought to obtain a writ of mandamus to compel defendant to allow him, by his agents, to examine the books of the company, which moved to dismiss the petition. The motion was denied by the Supreme Court of Delaware. In the course of its opinion, the court said that a director need not state to his fellow directors the reason for a desired examination by him of the corporate records, and such fellow directors cannot require such reasons. As to a contention of defendant that, when a director avails himself of assistance in such examination, he must be personally present at all times of the investigation, the court concluded that such a requirement would "be wholly devoid of reason." *State ex rel. Dixon v. Missouri-Kansas Pipe Line Co.*, 36 A. 2d 29. Edwin D. Steel, Jr., of Wilmington, for relator. C. Stewart Lynch of Wilmington, for defendant.

Iowa.

Attorney's fee allowed attorney in stockholder's suit instigated by him as a stockholder and as his own attorney, he being later joined by other stockholders and their counsel. In a stockholders' action, instituted to prosecute a claim which the directors of the corporation

refused to pursue, the original plaintiff was a stockholder who was also an attorney, who appeared throughout the protracted litigation as counsel, although later joined by other attorneys. A substantial recovery was had, although far short of the claimed amount. The defendants, among other things, resisted the allowance of any attorney fee to the original plaintiff. The Supreme Court of Iowa, however, ruled that as the corporation had been benefited, the fund it received should bear the burden of a reasonable compensation to the attorney for the services he rendered in producing it, pointing out that in a stockholders' suit such as this the relationship of attorney and client is not based on contract but is superimposed by law. The court said: "The usual status of attorney and client does not exist herein. The cases that discuss that usual status are not in point. Counsel have furnished us no authorities squarely in point. Diligent search has revealed none." *Ontjes et al. v. MacNider et al.*, 12 N. W. 2d 284. Smith & Beck and Senneff & Duncan of Mason City, for appellant. F. A. Ontjes of Mason City, W. G. Henke of Charles City and Remley J. Glass of Mason City, for appellees.

Maryland.

Stockholder held to be without standing to complain of acts related to management of corporation occurring prior to time he became a shareholder. Complainant stockholder sought the appointment of a receiver for the property and assets of defendant company which, at the time of the institution of the action was not in danger of becoming insolvent. The suit was based upon acts of the officers and directors which occurred prior to 1930, when complainant acquired his stock. There was no averment in the bill that complainant had made any effort to obtain remedial action by application to the directors or to the shareholders. The principal complaint as to the period subsequent to 1930 was that the officers and directors had been inactive. The Court of Appeals of Maryland concluded that under the circumstances there did not appear sufficient danger to the corporation or its property to justify a court of equity taking over the management and operation of the corporation. The court also ruled that the complainant did not have the standing to complain of acts and management of the corporation prior to the time that he became a shareholder. An order denying relief was therefore affirmed. *Eisler v. Eastern States Corporation*, 35 A. 2d 118. William Saxon of Baltimore and William Harris of Newark, N. J., for appellant. Richard W. Case and R. E. Lee Marshall (Marshall, Carey & Doub, on the brief), of Baltimore, for appellee.

Foreign Corporations

Massachusetts.

Circuit Court of Appeals upholds District Court in declining jurisdiction of internal affairs of a foreign corporation. Plaintiff stockholder, a citizen of Massachusetts, instituted suit in the Massachusetts

Federal District Court, based on diversity of citizenship, against a New Jersey corporation, to recover the par value of 200 shares of general stock and the alleged proportionate share of the earned surplus of the corporation as of January 10, 1941. This was the date which marked the end of the fifty year period for which the company was originally to exist. In November, 1940, however, the stockholders voted to extend the life of the corporation for a new period of fifty years, the plaintiff voting against the extension. The District Court declined to exercise jurisdiction on the ground that this would be interfering with the internal affairs of a foreign corporation. Upon appeal, this judgment was affirmed by the United States Circuit Court of Appeals, First Circuit, which regarded the courts of New Jersey as affording a proper forum in which the issues should be tried. *Kelley v. American Sugar Refining Co.*, 139 F. 2d 76. Patrick Henry Kelley and Daniel J. Lyne (Lyne, Woodworth & Evarts, of counsel), of Boston, for appellant. Richard Wait (John L. Hall, of counsel), of Boston, for appellee. (*Petition for certiorari filed in the Supreme Court of the United States, February 17, 1944; Docket No. 712. Certiorari denied, March 27, 1944, 64 S. Ct. 789.*)

New Jersey.

Chancery Court indicates suits between two licensed foreign corporations in state courts are not limited to causes of action arising out of transactions within the state. Complainant New York corporation brought suit in the Court of Chancery against another New York company on a contract executed in New York. Both companies were licensed to do business in New Jersey. Defendant endeavored to prevail upon the court to refuse to accept jurisdiction, contending that the right to serve process upon a licensed foreign corporation existed only with respect to acts arising out of business transacted in New Jersey. The court, in denying defendant's motion seeking to dismiss the suit, found no statutory support for the contention that when a foreign corporation has been brought into court by the prescribed method, the court's judicial discretion to entertain a cause of action against it can be exercised only in such causes as arise out of transactions in which the corporation is engaged in New Jersey, observing: "This court has jurisdiction of a suit between non-residents of this state even if the cause of action arose in another state. Whether jurisdiction will be exercised is within the discretion of the court, the exercise of which discretion depends on the facts and circumstances present in each particular case. Unless a compelling reason appears that the parties should be relegated to the courts of their domicile, discretion in all transitory actions is usually exercised, especially in actions arising out of contracts, in favor of retaining jurisdiction; it is also so exercised in tort actions." *Quigley Co., Inc. v. Asbestos Limited, Inc. et al.*, 35 A. 2d 432. Max L. Rosenstein of Newark, for defendant Asbestos Limited, Inc., for the motion. George L. Burton of South River, for complainant, contra. CCH Court Decisions Requisition No. 316265.

New York.

Corporation maintaining several offices as headquarters for salesmen held doing business but service set aside because not made upon a proper managing agent. The New York Supreme Court, Dutchess County, recently regarded an Indiana corporation as doing business in New York where it maintained several offices in New York City which were used as headquarters for its salesmen, with a clerical staff attached to each. Orders solicited in the state were subject to approval at the corporation's principal place of business in Indiana, and, after acceptance the merchandise was shipped from Indiana directly to the purchaser in the State of New York. There were telephone listings in the corporate name and petty cash was held in the state. The regular and systematic solicitation of orders and shipments was regarded as meeting the test of continuity and permanence required to consider the company as doing business for the purpose of service of process upon it. However, a motion to vacate the service was granted, despite this determination, for the reason that the person served was a stenographer and secretary to the district sales manager and there was nothing before the court to establish this person was a "managing agent" within the meaning of Sec. 229, Civil Practice Act. The granting of the motion was without prejudice to service upon a person more representative of the defendant corporation. *Raquet v. Messenger Corporation*, 46 N. Y. S. 2d 306. William H. Montgomery of Poughkeepsie, for plaintiff. Chadbourne, Hunt, Jaeckel & Brown of New York City, for defendant.

Service in stockholder's derivative suit, made upon his corporation by serving its resident agent in its home state, set aside by Federal court where suit was instituted in a state other than that of residence of defendant director or the corporation. In two suits before the United States District Court, Southern District of New York, brought by a stockholder in behalf of his corporation against one of its directors, a non-resident, seeking an accounting for alleged misappropriation by the director and two others of assets of three other corporations, all of whose shares were owned by the plaintiff's corporation, service of process upon the latter company, a Delaware corporation, was made upon its resident agent in Delaware. The District Court granted a motion to dismiss the service upon this company as invalid and also granted motions to set aside service upon the other defendants, since the corporation was an indispensable party. Upon appeal, the United States Circuit Court of Appeals, Second Circuit, affirmed the judgment of the lower court, ruling that "although section 112, of Title 28 provides for service outside the district upon the corporation in behalf of which the shareholder sues, that privilege is limited to the actions therein described," and that the action before the court was not one of these. "The privilege," observed the court, "is expressly confined to actions brought in a district in which the corporation could have sued, and the corporation could not sue the directors where the shareholders 'resided,' unless that was its residence or theirs (that of the directors)." One

of the actions having been removed from the New York Supreme Court prior to any service upon the corporation, the court indicated the same conclusion was to be reached in both that action and the one originally instituted in the Federal District Court. As service upon the company was set aside, the court remarked that "it became inevitable" that the complaints against the director should be dismissed. *Greenberg v. Giannini et al.*, United States Circuit Court of Appeals, Second Circuit, January 31, 1944. Milton Pollack of New York City, for the appellant. Samuel B. Stewart, Jr., of New York City, for Giannini. Charles H. Kelby of New York City, for Transamerica Corporation. Commerce Clearing House Court Decisions Requisition No. 316132; 140 F. 2d 550.

Taxation

Connecticut.

Federal excess-profits tax held not deductible. The Tax Commissioner refused to allow plaintiff to deduct the Federal excess-profits tax as a deduction in connection with plaintiff's corporation business tax for the first six months of 1942 on net income imposed by Chapter 66b. Sec. 419c provides that in determining net income "there shall be deducted from gross income all items deductible under the federal corporation net income tax law effective and in force on the last day of the income year, except (1) federal taxes on income or profits * * *." The Supreme Court of Errors, after an examination of federal income and excess-profits tax provisions, called attention to a distinction in the Internal Revenue Code between "deductions" and "credits," noting that deductions were not subject to any tax. It observed that "the right to subtract net income subject to the excess-profits tax in determining the net income subject to the normal tax and the surtax is a typical instance of a 'credit.' The net income so subtracted is not freed from taxation." "When our statute refers to 'items deductible under the federal corporation net income tax law,' the intent could not have been to include 'credits' of sums which are subject to taxation under the federal law, and the subtraction of which is allowed only for the purpose of determining the particular amount of net income subject to a particular tax." The court concluded that the Commissioner was right in ruling that the excess-profits net income was not deductible in determining the income of the plaintiff subject to taxation under Chapter 66b. *McKesson and Robbins, Inc. v. Walsh*, 35 A. 2d 865. William Reeves, of Bridgeport, for the plaintiff. Leo V. Gaffney, Asst. Atty. General (Francis A. Pallotti, Atty. General, on the brief), for the defendant. Commerce Clearing House Court Decisions Requisition No. 316800.

Illinois.

Oil production tax ruled unconstitutional. The Supreme Court of Illinois has held invalid in its entirety the oil production tax imposed by S. B. 388, L. 1941, finding constitutional barriers to the imposition

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of the tax as to the royalty interest and as to producers against whom the tax was levelled. *The Ohio Oil Company et al. v. Wright et al.*,* Illinois Supreme Court, March 21, 1944. Commerce Clearing House Court Decisions Requisition No. 318888.

* The full text of this opinion is printed in **The Corporation Tax Service**, Illinois, page 4802.

Mississippi.

Excess profits tax not allowed as a state income tax deduction. Ch. 120, L. 1934, imposing the income tax, contains a provision, in Sec. 8, that, in computing the net income, there shall be allowed as deductions "taxes, other than income taxes, imposed by any authority paid or accrued within the taxable year." Appellant filed its petition to revise its income tax return for the year 1941 so as to claim deduction for excess profits taxes paid to the Federal Government during that period. The Mississippi Supreme Court reversed a ruling of the Chancery Court indicating the petition was properly denied by the state authorities, the higher court holding that the deduction should have been allowed. (*Tri-State Transit Company of Louisiana v. Stone*,* 16 So. 2d 35.) Upon a rehearing of the case on a suggestion of error, the court reversed the ruling mentioned above and held that the excess profits tax is an income tax and indicated its deduction was not allowable under the statute. *Tri-State Transit Co. of Louisiana v. Stone*,* 16 So. 2d 782. Stevens & Stevens of Jackson, for appellant. J. H. Sumrall of Jackson, Greek L. Rice, Atty. General, and Jefferson Davis and W. B. Fontaine, Asst. Attys. General, for appellee.

* The full text of these opinions are printed in **The Corporation Tax Service**, Mississippi, pages 1597 and 1611.

Missouri.

Sales tax ruled not applicable to sales by foreign corporations, with offices in state, involving coal sold to customers in state but delivered f. o. b. mines located in other states. Plaintiffs sought declaratory judgments to determine the taxability of sales under the Sales Tax Act. They were foreign corporations engaged in the business of selling coal from mines located outside of Missouri to customers for use or consumption in that state, all coal being delivered f. o. b. mines in Illinois or Indiana. Some of the plaintiffs had their principal places of business in other states, while others had either such business places or sales offices in Missouri. No coal was mined by any in Missouri, nor were any stockpiles maintained there. The Sales Tax Act exempted from its operation retail sales "made in commerce between this state and any other state of the United States." The Missouri Supreme Court reversed a judgment holding the transactions taxable. "Under the facts of the cases at bar," observed the court, "the ownership of, or title to, the property sold is presumed

to have been transferred to the vendees in the State of Illinois (or Indiana) where the property was consigned to the vendees free on board the cars of carriers. There is no evidence that parties had a contrary intention. The 'Sale at retail,' the transfer of the ownership of, or title to, the property sold, the 'taxable event' (Cf. *McGoldrick v. Berwind-White Coal Mining Company*, 309 U. S. 33, 60 S. Ct. 388, wherein the 'taxable event' considered was 'any transfer of title or possession, or both') having occurred in the State of Illinois (or Indiana), the sales may not be taxed under the provisions of the Sales Tax Act; the sales were not sales at retail 'in the state' (Subsection (a), Section 11408, *supra*). And the state could not levy and collect the sales tax upon an event in interstate commerce which does not occur within the state's boundaries." *Binkley Coal Company et al. v. Smith*,* Missouri Supreme Court, Division 1, February 7, 1944. Commerce Clearing House Court Decisions Requisition No. 316592.

* The full text of this opinion is printed in *The Corporation Tax Service*, Missouri, page 6319.

New Jersey.

Court of Errors and Appeals affirms State Supreme Court ruling that New Jersey corporation, inactive in state, was not subject to taxation on intangibles at its chief office in state where all of its property had been assessed in another state. The judgment of the Supreme Court of New Jersey was rendered in the case of *Duke Power Company v. State Board of Tax Appeals et al.*, 129 N. J. Law 449, 30 A. 2d 416, (The Corporation Journal, May, 1943, page 404.) The opinion of the Court of Errors and Appeals was a *per curiam* opinion, dated March 9, 1944, which reads: "The judgment under review herein should be affirmed for the reasons expressed in the opinion by Mr. Justice Bodine in the Supreme Court, reported at 129 N. J. Law 449."

Oklahoma.

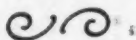
Oklahoma company held subject to state income tax upon its entire net income, including income from sales followed by shipments from a point within the state to points outside the state. Plaintiff Oklahoma corporation filed its income tax returns for the years 1939, 1940 and 1941 with an allocation of income for taxation in Oklahoma of only the portion thereof attributable to business transacted wholly within the state. The Commission having made an additional assessment for each of these years to include the net income from that portion of the business said by plaintiff to be interstate commerce, plaintiff instituted suit to recover such additional amounts paid under protest. The Supreme Court of Oklahoma affirmed a judgment for the defendant commission, regarding the entire income as derived from business transacted in the state and concluding that there was no occasion for apportionment. "Here," said the court, "all the goods were manufactured and all sales completed in this State. Title passed

here, and the taxpayer was done with the transaction upon delivery of the goods f. o. b. the carrier. The net income was therefore 'derived from * * * business transacted within this State', within the meaning of said section 876, and not from 'business done partly within and partly without this State (commonly known as interstate business).'" *Rock Island Refining Co. v. Oklahoma Tax Commission*,* 145 P. 2d 194. Brown & Cund of Duncan, for plaintiff in error. E. L. Mitchell, A. L. Herr and C. W. King of Oklahoma City, for defendant in error.

* The full text of this opinion is printed in *The Corporation Tax Service*, Oklahoma, page 1726.

Pennsylvania.

Inclusion of value of machinery leased to owner of mill by Federal government as part value of real estate assessed to lessee, upheld. The assessment of appellee corporation's real estate was increased in February, 1942, by the sum of \$618,000, to cover the value of certain additional machinery which had been installed as an integral part of its mill. The company opposed the additional assessment, contending it did not own the machinery, but merely leased it from the United States Government which held title to it. The Supreme Court of Pennsylvania upheld the assessment, observing that there could be no doubt that the machinery formed a real and permanent part of the mill of the company and was, therefore, a proper subject of assessment as real estate. "Furthermore, this private arrangement between the Mesta Company, the owner of the land and buildings and operator of the mill, and the Federal government, the owner of the machinery, which treats the equipment as personal property and permits the latter to remove it at the termination of the contract, can in no way change the legal effect of the Act of Assembly which specifically designates machinery, under these circumstances, as real estate for tax purposes." "The mill of the company was taxable under the statute as real estate, and this necessarily included the machinery essential to the existence and operation of that manufactory." The court concluded that the evidence that the machinery was not owned by the appellee was irrelevant and was improperly admitted. *Appeal of Mesta Machine Company*, 347 Pa. 191, 32 A. 2d 236. Walter P. Smart, Co. Sol., and Harry M. Montgomery, Asst. Co. Sol., of Pittsburgh, for appellant. Elder W. Marshall, Carl E. Glock and Reed, Smith, Shaw & McClay of Pittsburgh, for appellee. Samuel O. Clark, Jr., Asst. Atty. Gen., Sewall Key and Paul F. Mickey, Sp. Assts. to Atty. Gen., and Charles F. Uhl, U. S. Atty., of Pittsburgh, for United States, intervener. (*Appeal filed in the Supreme Court of the United States, October 8, 1943; Docket No. 417. Jurisdiction noted, October 25, 1943. Argued, February 29 and March 1, 1944.*)



Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ARKANSAS. Docket No. 311. *McLeod, Commissioner of Revenues v. J. E. Dilworth Company et al.*, 171 S. W. 2d 62. (The Corporation Journal, October, 1943, page 16.) Gross receipts tax—solicitation by traveling representatives, followed by shipment into state in interstate commerce. Petition for writ of certiorari filed, August 31, 1943. Certiorari granted, October 25, 1943. Argued, February 4, 1944.

GEORGIA. Docket No. 680. *Davis et al. v. Smith et al.*, 28 S. W. 2d 148. (The Corporation Journal, April, 1944, page 153.) Property taxes—taxability of open account owed by United States for construction work. Petition for certiorari filed, February 8, 1944. Certiorari granted, April 3, 1944.

INDIANA. Docket No. 355. *Department of Treasury of Indiana et al. v. International Harvester Co. et al.*, 47 N. E. 2d 150. (The Corporation Journal, June, 1943, page 423.) Gross income tax—sales effected by branch offices outside Indiana to dealers and users located in Indiana. Appeal filed, September 15, 1943. Probable jurisdiction noted, October 25, 1943. Argued, February 29, 1944.

IOWA. Docket No. 441. *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659. (The Corporation Journal, October, 1943, page 18.) Liability of unlicensed foreign corporation to collection of Iowa use tax on orders solicited by traveling salesmen in state, approved in another state, from which goods were shipped in interstate commerce into Iowa. Petition for certiorari filed, October 19, 1943. Certiorari granted, November 22, 1943. Argued, February 4, 1944.

MASSACHUSETTS. Docket No. 712. *Kelley v. American Sugar Refining Co.*, 130 F. 2d 76. (The Corporation Journal, May, 1944, page 166.) Corporations—extension of franchise by vote of stockholders—jurisdiction over dissenting suit. Appeal filed, February 17, 1944. Certiorari denied, March 27, 1944.

MINNESOTA. Docket No. 33. *Northwest Airlines, Inc. v. State of Minnesota*, 7 N. W. 2d 691. (The Corporation Journal, March, 1943, page 351.) State taxation—assessment of Minnesota personal property tax against entire fleet of airplanes operated by Minnesota corporation in interstate commerce. Petition for certiorari filed, April 2, 1943. Certiorari granted, May 10, 1943. Argued, October 19 and 20, 1943.

MINNESOTA. Docket No. 291. *Union Brokerage Co. v. Jensen et al.*, 9 N. W. 2d 721. (The Corporation Journal, October, 1943, page 14.) Unlicensed foreign customhouse brokerage corporation—doing business—right to sue. Petition for certiorari filed, August 26, 1943. Certiorari granted, October 11, 1943. Argued, February 1, 1944.

PENNSYLVANIA. Docket No. 417. *Appeal of Mesta Machine Co.*, 347 Pa. 191, 32 A. 2d 236. (The Corporation Journal, May, 1944, page 174.) Real estate tax—assessment of machinery owned by the United States and leased to manufacturer. Appeal filed, October 8, 1943. Jurisdiction noted, October 25, 1943. Argued February 29 and March 1, 1944.

WISCONSIN. Docket No. 565. *Wisconsin Gas and Electric Company v. The United States of America*, 138 F. 2d 597. (The Corporation Journal, January, 1944, page 88.) Federal income tax—right of public utility corporation to deduct privilege dividend tax paid to the State of Wisconsin. Appeal filed, December 30, 1943. Certiorari granted, January 31, 1944. Argued, March 10, 1944.

* Data compiled from CCH U. S. Supreme Court Service, 1943-1944.



Regulations and Rulings

INDIANA—Accounts receivable which are evidenced by a book of accounts are not subject to the general intangibles tax law or otherwise subject to property taxes. (Opinion of Attorney General, Indiana CT (Corporation Tax) Service, ¶ 29-028.)

A foreign corporation, not qualified to do business in Indiana, which refuses to register its transportation equipment is liable to the general penalty provisions of Section 29 of the motor fuel tax law and amenable to the criminal statutes of the state which is foreign to its residence. The use fuel tax law is constitutional and a foreign corporation which refuses to file a report or pay the tax can be assessed penalties and the sheriff can levy upon and sell the real and personal property of the delinquent user. (Opinion of Attorney General to Auditor of State, Indiana CT (Corporation Tax) Service, ¶ 40-501.)

IOWA—The rules and regulations in connection with the personal income tax and the business tax on corporations have recently been revised by the State Tax Commission. (Iowa CT Service, ¶¶ 1501-1788.)

MISSISSIPPI—Dividends received from shares of national banks are not subject to the Mississippi income tax. (Opinion of Attorney General, Mississippi CT, ¶ 1588.)

NEW MEXICO—Dividends received from national bank shares are not taxable to the individual recipients. (Opinion of Attorney General to the Bureau of Revenue, New Mexico CT, ¶ 1588.)

NORTH CAROLINA—A cost-plus-a-fixed-fee contract with the Federal Government which stipulates that the taxpayer "shall furnish and deliver all of the supplies or services described" indicates that the taxpayer is an independent contractor and thus is not entitled to exemption under the sales and use taxes. The fact that the contract provides that title to property shall vest in the Government upon delivery to the taxpayer does not make the taxpayer an agent of the Government and thus exempt him from tax because the sale to the taxpayer may be complete at the time of delivery of the property. However, if the taxpayer undertakes to manufacture or fabricate any product for the Government, sales to the taxpayer of such property as enters into and becomes a part of such product are exempt. (Opinion, Attorney General to the Commissioner of Revenue, North Carolina CT, ¶ 60-100.063.)

OHIO—In computing the allocation of capital stock to Ohio for franchise tax purposes, income from investments and rents is not included in the business factor; property owned by a corporation though not used in the regular course of business is included in the property factor. (Ruling of Chief of Corporation-Franchise Division, Ohio CT, ¶ 5-010.)

TEXAS—The Attorney General of Texas has rendered an opinion to the effect that the franchise tax fee of a corporation in a bona fide state of liquidation is \$20., where a sum is set up on the books of the corporation earmarked "to stockholders upon final liquidation," this sum set up on the books being an asset of the stockholders and not of the corporation. (Texas CT, ¶ 15-020.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

KENTUCKY—Statement of Existence due on or before July 1.—Foreign Corporations.

Annual Verification Report as to Process Agent due on or before July 1.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

- NEVADA—Annual List of Officers and Designations and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.
- NEW JERSEY—Franchise Tax Return and Tax due on or before May 15.—Domestic Corporations.
- NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- NEW YORK—Annual Franchise (Income) Tax Return (Form 3-IT-Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.
- OREGON—Annual Report due during June.—Domestic and Foreign Corporations.
- RHODE ISLAND—Corporate Excess Tax due on or before July 1 and delinquent after July 15.—Domestic and Foreign Corporations.
- SOUTH DAKOTA—Annual Report due between May 1 and June 1.—Domestic Corporations.
- TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.
Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.
- UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.
- WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.
- WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.
Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.
Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief works are located in other states.
- WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's

Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5 N. Y.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Cross Hauling . . . and the Answer, Spot Stocks. Explains how the possible wartime restrictions on cross-hauling point the way to volunteer peacetime economies through the keeping of warehouse stocks at strategic shipping points.

Amendments to Delaware Corporation Law, 1943. Contains complete text of the amendments adopted at the 1943 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

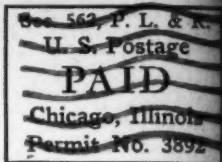
We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

What! We Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Judgment by Default. Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

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